

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID A. AVANT,	§
	§
Defendant Below-	§ No. 60, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 1001003732
Plaintiff Below-	§
Appellee.	§

Submitted: February 14, 2011

Decided: March 28, 2011

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 28th day of March 2011, upon consideration of the appellant’s opening brief, the State’s motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, David Avant, filed this appeal from the Superior Court’s order sentencing him for a violation of probation (VOP). The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Avant’s opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Avant pled guilty on January 21, 2010 to one count of distribution of drugs within 300 feet of a park. The Superior Court

immediately sentenced Avant to three years at Level V incarceration to be suspended immediately for 1 year at Level III probation. Avant did not appeal. In December 2010, Avant was charged with a VOP. After a hearing, the Superior Court found that Avant had violated the conditions of his probation and sentenced him to one year at Level V incarceration to be suspended immediately for 120 days at Level IV with no further probation to follow. Avant appeals that order.

(3) In his opening brief on appeal, Avant asserts that the sentencing guidelines only call for a one-level increase in supervision, if any, for a first violation of probation. He implies that the Superior Court's Level IV VOP sentence was erroneous because it exceeded the sentencing guidelines recommendation. We disagree.

(4) This Court's appellate review of a sentence is extremely limited. Our review generally ends upon a determination that the sentence is within the statutory limits prescribed by the legislature.¹ In sentencing a defendant for a VOP, the trial court is authorized to impose any period of incarceration up to and including the balance of the Level V time remaining to be served on the original sentence.² In this case, the Superior Court could have reimposed three years at Level V incarceration for Avant's VOP. Instead, the Superior Court sentenced Avant to 120 days at Level IV supervision. Thus, the sentence imposed by the Superior

¹ *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

² 11 Del. C. § 4334(c).

Court was authorized by law, and we conclude that it was neither arbitrary nor excessive.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice